

BEFORE THE  
POSTAL RATE COMMISSION  
WASHINGTON, D.C. 20268-0001

RECEIVED

JUL 6 4 10 PM '99

POSTAL RATE COMMISSION  
OFFICE OF THE SECRETARY

---

COMPLAINT ON POST E.C.S.

---

Docket No. C99-1

**UNITED STATES POSTAL SERVICE  
OBJECTION TO UNITED PARCEL SERVICE  
INTERROGATORIES UPS/USPS-34-43  
(July 6, 1999)**

In accordance with Rules 25 and 26 of the Commission's Rules of Practice and Procedure, the Postal Service hereby objects to interrogatories UPS/USPS-34-42, filed on June 23, 1999, and interrogatory UPS/USPS-43, filed on June 25, 1999. A general objection to all of the interrogatories is presented first, followed by specific objections.

**I. GENERAL OBJECTION**

The Postal Service has previously filed three pleadings in this docket which set forth in great detail the Postal Service's general objection to the discovery currently promulgated by the participants.] On the same grounds stated in those documents, the Postal Service maintains its general objection, equally applicable to interrogatories 34 through 43, that UPS's discovery requests are inappropriate until preliminary rulings defining the procedures and scope of permissible discovery are finalized.

**II. SPECIFIC OBJECTIONS**

*Interrogatory UPS/USPS-34.* Interrogatory 34 asks whether the Electronic

---

<sup>1</sup> Those pleadings were the Objection of the United States Postal Service to UPS Interrogatories UPS/USPS-1-24 (May 25, 1999) at pages 1-4; the United States Postal Service Motion for Partial Reconsideration of P.O. Ruling No. C99-1/2 (June 8, 1999) at pages 1-5; and the United States Postal Service Answer in Opposition to the Motion of UPS to Compel Answers to Interrogatories UPS/USPS-1-7 (except 5(g)) and 9-20 (June 18, 1999).

Postmark™ system is, or will be, available with services other than Post E.C.S. The Postal Service objects on grounds of relevance, commercial sensitivity, jurisdiction (in part), and privilege (in part). The Postal Service's Post E.C.S. product offers an Electronic Postmark™ digital authentication seal, which provides an official time-and-date seal. This interrogatory, however, relates to *other services*, which are not the subject of this proceeding, for which the Electronic Postmark™ system is or *will* be available. The subject matter of this proceeding is the postal or nonpostal nature of Post E.C.S., and the characteristics of the service can be evaluated independently. Consequently, the Postal Service submits that the subject matter of the interrogatory is irrelevant.

The Postal Service also objects on grounds of commercial sensitivity and jurisdiction to the extent that this question seeks information about the degree to which, if at all, foreign posts have incorporated, or will incorporate, the Electronic Postmark™ system in their services. The foreign posts' services have no bearing on the Commission's resolution of the legal nature of the Postal Service's product and are not within the scope of this proceeding. Future plans for their services are commercially sensitive information provided by a person' to the Postal Service and must be protected from disclosure as they would in a FOIA context.<sup>3</sup>

The Postal Service also objects on grounds of commercial sensitivity and

---

<sup>2</sup> See *Stone v. Export-Import Bank*, 552 F.2d 132, 137 (5<sup>th</sup> Cir. 1977) (concluding that foreign governmental institution is a "person" for purposes of exemption 4).

<sup>3</sup> See, e.g., *Timken Co. v. U.S. Customs Service*, 491 F. Supp. 557 (D.D.C. 1980).

privilege to the extent this interrogatory seeks information about future plans (either by the Postal Service, IPC, or the other posts) to provide the Electronic Postmark™ system with other products. Once again, UPS seeks information about future plans for competing services. Such information is both commercially sensitive and clearly predecisional, and must be shielded from disclosure. Disclosure of this information would give competitors insight into product development strategies and plans, which any provider would jealously guard, particularly in the burgeoning and rapidly evolving electronic services market. Disclosure of such information would result in competitive harm, as it would enable competitors to copy ideas for use in their new product offerings and accelerate experimentation with, and introduction of, new, competing services.

Interrogatories UPS/USPS-36-40. Interrogatories 36-40 request information about the extent to which computer equipment, servers, computer programmers, and phone lines used in connection with Post E.C.S. are used for purposes other than Post E.C.S. The Postal Service objects on grounds of relevance, undue burden, and commercial sensitivity. As the Postal Service pointed out in its objection to interrogatories UPS/USPS-I (b-c) and 7, the sharing of internal resources, including staff, supplies, and expertise in connection with Post E.C.S. and other products or functions, does not elucidate the question of whether Post E.C.S. is a “postal” service. The service should be judged on its own merits. Furthermore, the interrogatories are invasive and geared towards uncovering the internal operating procedures of the Postal

Service. Commission precedent makes clear that “the decisional processes” whereby services are brought into being “have no bearing on the qualities of the service[s] [themselves].” Rather, such information is of “very attenuated relevance, at best. . . .” See P.O. Ruling No. C96-1/5 at 5. The internal processes by which nonpostal products like Post E.C.S. are constructed are similarly irrelevant here. Finally, the interrogatories are not limited in scope, and it would be an enormously time-consuming exercise to list all of the uses to which inputs to Post E.C.S. are employed in other capacities. Finally, the response to this interrogatory could give competitors indications of the capacity of the Postal Service’s equipment used in providing Post E.C.S.

**Interrogatory** UPS/USPS-41. This’ interrogatory asks whether the Postal Service believes that it is a crime if a Post E.C.S. transmission is intercepted, and if so, to state what crime is committed in this instance. This interrogatory is objectionable on the grounds that it is irrelevant and seeks a legal conclusion.

The interrogatory requires the Postal Service to offer a legal opinion and identify statutory sources of its conclusions. This cannot be accomplished without interpreting legal authority, a function which has been traditionally reserved for lawyers and judges and routinely excluded from the evidentiary process. See *F.A.A. v. Landy*, 705 F.2d 624, 632 (2d Cir. 1983), *cert.* denied, 464 U.S. 895 (1983) (upholding district court’s exclusion of testimony on meaning and applicability of federal regulations); *Marx & Co. v. Diners Club, Inc.*, 550 F.2d 505, 511 (2d Cir.), *cert.* denied, 434 U.S. 861 (1977) (“[I]t is . . . erroneous for a witness to state his opinion on the law of the forum.”); *U.S. v.*

*Phillips*, 478 F.2d 743, 746 n.6 (5th Cir. 1973) (holding that trial court erred in permitting testimony on question of law or mixed question of law and fact). Indeed, proposed Special Rule of Practice 5 expressly prohibits the receipt of legal opinions as evidence: “Argument will not be received in evidence, It is the province of the lawyer, not the witness. It should be presented in brief or memoranda.” P.O. Ruling No. C99-1/2, Attachment A. Furthermore, Commission precedent makes clear that the Postal Service cannot be forced to “indicate the legal position of the Postal Service” through discovery. See P.O. Ruling No. R97-1/39.

Interrogatory ***UPS/USPS-42***. Interrogatory 42 requests that the Postal Service identify the source of UPS’s characterization of the **GENERAL ACCOUNTING OFFICE, US POSTAL SERVICE DEVELOPMENT AND INVENTORY OF NEW PRODUCTS, GAO/GGD-99-15** (November 1998). The interrogatory states that the report “indicates that the Postal Service’s electronic services are (or at least were, through the third quarter of Fiscal Year 1998) operating at a loss.”

The Postal Service objects on grounds that the interrogatory is vague, assumes facts not in evidence, and requests irrelevant information. First, the interrogatory only states that the report “indicates” that the proposition contained in it is true, yet it provides no basis or citation to the text of the report to support this conclusion. Second, the interrogatory assumes facts not in evidence, i.e., that the Postal Service’s electronic services are (or at least were, through the third quarter of Fiscal Year 1998), operating at a loss.” Third, the interrogatory does not represent that finances for Post E.C.S.

inform the proposition, In any event, the relationship between costs and revenues for Post E.C.S. is irrelevant. The issue before the Commission is a narrow legal question. i.e., whether Post E.C.S. is a "postal" service for purposes of Chapter 36 of Title 39.

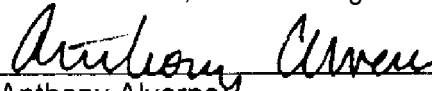
**Interrogatory** UPS/USPS-43. This question asks when Post E.C.S. test participants become obligated to make payment for Post E.C.S. transactions. The Postal Service objects on grounds of relevance, as this does not relate to the core issue of whether Post E.C.S. is a postal service.

Respectfully submitted,

UNITED STATES POSTAL SERVICE

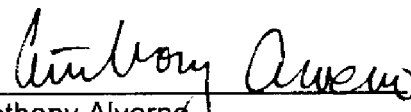
By its attorneys:

Daniel J. Foucheaux, Jr.  
Chief Counsel, Rate-making

  
Anthony Alverno

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon all participants of record in this proceeding in accordance with section 12 of the Rules of Practice.

  
Anthony Alverno

475 L'Enfant Plaza West, S.W.  
Washington, D.C. 20260-1137  
(202) 268-2997; Fax -6187  
July 6, 1999